

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

December 10, 2010

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on December 10, 2010. Members present were Chairman Louis Stout, James Griggs, Barry Stumbo, Janice Meyer and Thomas Glover. Members Kathryn Moore and Noel White were absent. Others present were Jim Hume, George Dillon and Mark Newberg of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the November 19, 2010 meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Moore, White absent) to approve the minutes of the November 19, 2010 meeting.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** - appeals for a conditional use permit to conduct underground mining of limestone in the Agricultural-Rural (A-R) and Neighborhood Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road. (Council District 12)

The Staff Recommends: Approval of a conditional use for the southerly half of the proposed mining area, for the following reasons:

1. An underground mining operation confined to this area should not adversely affect the subject or surrounding properties. The area to be mined is immediately adjacent to an existing underground mining and quarrying operation that has been in place for over fifty years. Property to the west and southwest of this area, consisting of several hundred acres of land, is owned and managed by the same landowner that is leasing the land to be mined to Vulcan. All aspects of the mining operation have been located and designed to satisfy concerns of Floracliff Nature Sanctuary, which is located immediately to the south of Vulcan's existing mine and over ½ mile away from the new mining area. Existing residences on the adjoining properties to the east and north will be at least 800' away, which should help to minimize the potential for disturbances from blasting.
2. Excessive noise or dust is not anticipated, as the mining activity will be entirely underground, and reclamation of the site and drainage control will be easily accomplished since only very minor alterations will be needed on the surface of the subject property.
3. The appellant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local mining laws, regulations or conditions.
4. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Construction and operation of the mine shall be done in accordance with the submitted application, and a revised site plan indicating: (a) an area to be mined equivalent to roughly half of the 107 acres that was originally proposed, with the northerly limit defined by a line extending from the centerline of Grimes Mill Road (as it intersects with Old Richmond Road) in a westerly direction to a point approximately 400' south of the north end of the impoundment of Elk Lick Creek; and (b) a setback of at least 200' to be provided from the impoundment and all portions of Elk Lick Creek.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Surface alterations shall be limited to the construction of air ventilators needed to comply with regulatory requirements, and reasonable access to those sites for construction and maintenance.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. The facility shall at all times comply with the provisions of the Mining/Quarrying Ordinance (Code of Ordinances #252-91), as well as all Federal and State regulations pertaining to mining activities, air pollution and waste management, and surface and ground water protection.
6. Blasting shall take place, on the average, no more than once per day, and shall be designed and implemented in strict compliance with all applicable regulatory standards relating to a "scale-distance formula".
7. Upon initiation of underground mining to the north of Vulcan's property, Vulcan shall not concurrently conduct any mining on their property (7430 Elk Lick Falls Road) at a depth greater than level 2 (approximately 300'), or otherwise conduct mining at both locations to the extent that historical levels of production are exceeded.
8. All underground mining on the approved portion of the subject property shall take place at a level 2 depth of approximately 300'.

Representation – Mr. Don Todd, attorney, was present representing the Old Richmond Road and Boone Creek Neighborhood Associations. He respectfully asked that the subject appeal be postponed, noting that a number of concerned neighbors only recently had the opportunity to review this application, and his clients had some case-related issues to raise.

Mr. Richard Hopgood, attorney, was present representing the appellant and expressed his objection to the requested postponement. He said several people in attendance who would be offering testimony were from out of town; and there had been a lot of preparation for the hearing, including working with the Nature Preserve for several months. Mr. Hopgood asked the Board to allow the case to go forward.

Chairman Stout suggested that both parties confer outside the Council Chambers to see if some kind of resolution could be reached, after which it would be determined whether to proceed with the hearing on this case or not.

(Following disposition of **A-2010-103: RANDALL PETERSON**, the Board returned to the aforementioned appeal.)

Mr. Hopgood stated that they understood that the opposition needed more time and agreed to postpone the subject appeal to the January 28 meeting. In the interim, he said Mr. Todd had agreed to provide them with a written list of concerns and/or objections two weeks before the meeting so they could review them and respond accordingly.

Mr. Todd stated that they had agreed to identify issues that were problematic and in exchange would be provided with Vulcan's mining plan and other relevant documents in order to more accurately define their objections.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (White, Moore absent) to postpone **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** until the January 28 meeting.

- b. **A-2010-90: NCJPM PROPERTIES** - appeals for an administrative review to allow a sign that projects above the roof line and overhangs the building in a Neighborhood Business (B-1) zone, on property located at 1315 W. Main Street. (Council District 1)

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

1. The existing signage has elements that render it appropriately considered as a roof sign and/or as a freestanding sign that overhangs the building, both of which are prohibited by Article 17-5 of the Zoning Ordinance.
2. Granting the appeal would set a damaging precedent that would significantly change the manner in which signage on or over a roof is regulated in Fayette County, resulting in a clear circumvention of the intent of the Zoning Ordinance.
3. Numerous options are available for creative and unique signage, of the artistic character desired by the appellant, which would comply with the design, size and height allowances for signage within the Neighborhood Business (B-1) zone.

Mr. Marx noted that the staff had received a letter from the applicant requesting a withdrawal of the subject appeal. No action by the Board was necessary with respect to the withdrawal request.

2. **No Discussion Items** - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board proceeded to take action.

**ABBREVIATED HEARINGS:**

- a. **V-2010-108: TATES CREEK SOUTH SHELL LTD. PARTNERSHIP** - appeals for a variance to reduce the required perimeter setback from 21 feet to 15 feet, and the setback from a residential zone from 20 feet to 15 feet, for construction of car wash mechanical rooms in a Planned Shopping Center (B-6P) zone, on property located at 4201 Saron Drive. (Council District 9)

The Staff Recommends: Approval of variances reducing the required perimeter setback from 21' to 15' and the required residential zone setback from 20' to 15', for the following reasons:

1. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. A car wash is an established use at this location, and the proposed additions are limited in size (192 square feet) and can be reasonably screened by the 15' landscape buffer to be maintained along the property boundary.
2. The layout of the existing facilities on the subject property, which is a relatively small lot somewhat isolated from the rest of the shopping center, has limited the options for how to accomplish needed upgrades for the car wash while maintaining safe vehicular movements on site.
3. Strict application of the Zoning Ordinance would force the appellant to place the mechanical rooms on the opposite side of the existing car wash building, where they would interfere with traffic flow and would also hinder the provision of related car cleaning facilities.
4. These small additions are reasonably considered as needed improvements for the car wash facility, and the proposed location on the back side of the existing building should not be interpreted as an effort to circumvent a requirement of the Zoning Ordinance, since the adjacent residential property is vacant, and has been for some time.

This recommendation of approval is made subject to the following conditions:

1. The room additions shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

3. Action of the Board shall be noted on the amended Final Development Plan for the subject property.

Chairman Stout asked whether or not there were objectors present for this appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Bob Cornett, with The Roberts Group, was present representing the appellant. He indicated that they understood and agreed to abide by the conditions for approval.

Board Questions – Referring to the staff report, Mr. Griggs asked about the 100-foot distance of separation the Zoning Ordinance now requires car washes in the B-6P zone to be from any residential zone, rather than 50 feet. Mr. Marx responded that the general rationale was the likelihood of disturbance from the noise generated by a carwash facility. Mr. Griggs said he imagined a lot of the noise would be coming from the compressor. He then asked why the compressor could not be moved next to the building rather than next to the residential lot. Mr. Cornett replied that it still would not be 100 feet from the adjacent property. He said there was other equipment required for the upgrade of the car wash facility, which necessitated the addition of two small mechanical rooms as well.

Mr. Griggs commented that it was worrisome to him that, under normal circumstances, this compressor would have to be 100 feet from a residential zone; and that the applicant previously was granted a variance of 20 feet and will be adding a larger compressor unit. He maintained that the compressor could be closer to the building and farther away from the residential lot; and there was an alternative available that may cost a little more but probably would make this variance unnecessary. Mr. Griggs said he was unable to support the requested variance without a good reason.

Action – A motion was made by Mr. Stumbo, and seconded by Mr. Glover to approve **V-2010-108: TATES CREEK SOUTH SHELL LTD. PARTNERSHIP** (a variance to reduce the required perimeter setback from 21 feet to 15 feet, and the setback from a residential zone from 20 feet to 15 feet, for construction of car wash mechanical rooms in a Planned Shopping Center [B-6P] zone on property located at 4201 Saron Drive) with the conditions as set forth by the staff.

The votes were as follows:

Ayes: Meyer, Glover, Stumbo, Stout

Nay: Griggs

Absent: White, Moore

The motion for approval carried, 4 to 1.

- b. **CV-2010-98: B & S RESTAURANT MANAGEMENT** - appeals for a conditional use permit to provide live entertainment (DJ & bands) and dancing at a restaurant/bar; and a variance to reduce the required 100' setback from a residential zone to 0 feet in a Neighborhood Business (B-1) zone, on property located at 120 (aka 122) W. Maxwell Street. (Council District 3)

The Staff Recommended: Postponement, for the following reasons:

1. Written assurance has not yet been provided by the owner of the subject property indicating that the appellant is authorized to pursue a conditional use and variance for a bar & grill with live entertainment.
2. Additional details are needed regarding: (1) the intended use of the outdoor deck/patio and courtyard adjacent to the building; (2) required off-street parking for the proposed use, which will require submittal of an indoor and outdoor seating arrangement, along with a calculation of the square footage of the building that will be used for the proposed activities; and (3) an assessment of required parking for other occupants of the building, and a description of how the available parking behind the building will be shared with those occupants and any other users in the area (e.g., Two Keys Tavern) that may have at some point been authorized to use that accessory parking lot.

3. There are a number of residential properties in close proximity to the subject property. Alternative music venues and operational considerations should be explored by the appellant that might serve to reduce the potential for a bar/grill with live entertainment to adversely affect those properties.

Chairman Stout asked whether or not there were objectors present for this subject appeal. There was no response; therefore, photos of the subject property were not presented.

Mr. Marx noted, in response to the Chairman, that representation for the applicant was not present for today's meeting, as there had not been twice previously; and that the Board had discussed their concerns about this at the last meeting. He stated that, as the Board directed, a letter was sent to the applicant advising them of the Board's concern and the likelihood that this case would not be postponed again if there was no representation at today's meeting. However, there had been no response from the applicant to date.

Chairman Stout asked counsel about the disposition of this case. Ms. Boland responded that the Board could basically disapprove this application based, in part, on the modified findings by staff for postponement and the fact that the Board did not have sufficient information to be able to make a determination on this case. She said the staff's findings would be sufficient legally to support a disapproval based on the lack of information, if the Board chose to take that route.

The Chairman asked for comments from the Board at this time. Ms. Meyer said since this case had been on the agenda for two or three months, and the applicant had not responded to any of the staff's communications, she would be in favor of disapproval. Since there were no other comments, the Chairman asked for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (White, Moore absent) to disapprove **CV-2010-98: B & S RESTAURANT MANAGEMENT** (a conditional use permit to provide live entertainment [DJ & bands] and dancing at a restaurant/bar; and a variance to reduce the required 100' setback from a residential zone to 0 feet in a Neighborhood Business [B-1] zone on property located at 120 [aka 122] W. Maxwell Street) for the reason that the Board did not have sufficient information to grant this appeal, as indicated by the staff in their staff report.

- c. **CV-2010-100: TOTAL GRACE BAPTIST CHURCH** - appeals for a conditional use permit to expand the parking area; and variances to reduce the required front yard from 30 feet to 0 feet in a Single-Family Residential (R-1C) zone and 20 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, on properties located at 1313 & 1317 N. Limestone Street. (Council District 1)

The Staff Recommended: Postponement, for the following reasons:

1. Additional time is needed for the appellant to consider a modified proposal that reduces the extent of paving proposed in the front yards of each lot, with the goal of maintaining a comparable amount of open space as that provided on the adjoining residential properties.
2. There are significant questions related to the overall design of the parking areas that are proposed, which should be discussed with the Division of Traffic Engineering prior to the Board's consideration of the conditional use request.
3. The provision of landscape buffers for the proposed parking lot, whether required by the Zoning Ordinance or otherwise deemed desirable, should be addressed by the appellant. Given the narrow width of the northerly lot, and the limited space between the church building and North Limestone, such buffers may ultimately determine the feasibility and design options for expanding the off-street parking areas for this church facility.

Chairman Stout asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

In response to the Chairman's request for comment, Mr. Marx stated that he and Traffic Engineer Jim Gallimore had been working with the applicant on the proposed parking expansion; and that the results of their site visit were not positive, which could explain why representation for the

church was not present today. He said he understood the Board's frustration regarding the two previous postponements of this case, but staff wished to make one final request to allow the applicant to come up with a significantly different parking proposal or withdraw their appeal.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (White, Moore absent) to postpone **CV-2010-100: TOTAL GRACE BAPTIST CHURCH** until next month's meeting.

- d. **C-2010-88: TRILOGY HEALTH SERVICES, LLC** - appeals for a conditional use permit to construct and occupy an assisted living facility (combined residential assisted living facility and nursing home, and all ancillary uses related thereto) in a Planned Neighborhood Residential (R-3) zone, on property located on a portion of 2599 Old Rosebud Road. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Immediately bordering property is currently vacant, with some type of residential use anticipated at some time in the future. With the recommended 15' wide landscape buffer along the property perimeter, the specialized residential facilities that are proposed should be compatible with whatever type of residential use is developed on the immediately adjoining property. Assisted living facilities and nursing homes do not generate high levels of traffic, and the activities at such facilities are not inherently noisy or otherwise disturbing, an important consideration given the location of the existing West Wynd subdivision.
2. All necessary public facilities and services are or will be available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The facilities shall be constructed in accordance with the submitted application, and a revised site plan indicating finalized parking, employees on the maximum shift, and landscaping details.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and prior to occupying the facilities.
3. The parking lots shall be paved, with spaces delineated, and landscaped in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the access point, traffic aisles and layout of the parking spaces shall be subject to review and approval by the Division of Traffic Engineering.
5. Any outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Old Rosebud Road shall be extended to the west end of the subject property, in accordance with the plans approved for the subject property by the Planning Commission. This extension shall be completed prior to the issuance of an occupancy permit from the Division of Building Inspection for this facility.
8. A 15' wide landscape buffer shall be provided around the full perimeter of the subject property (excepting the street frontage), to include (on the average) one tree for every 40' of linear boundary, recognizing that trees may be staggered rather than formally aligned. The buffer shall also include a minimum of fourteen perimeter landscaping areas, each with a minimum size of 120 square feet and planted with a mixture of shrubs and small species trees. These islands shall be located and otherwise designed to complement or be coincident with any screening required for the vehicular use areas, and shall be generally distributed as follows: five along the west side of the property; five along the rear property line; and four along the east side of the property. The overall design of the landscaping plan for this 15' wide perimeter buffer, including a description of species of plants to be used, shall be subject to review and approval by the Landscape Examiner with the Division of Building Inspection.
9. Action of the Board shall be noted on the Final Record Plat recorded for the 10-acre

subject property.

Chairman Stout asked whether or not there were objectors present for this appeal. There was no response; therefore, photos of the subject property were not presented. It was noted that this case was a continuance from the BOA meeting in October.

Representation – Mr. Glen Hoskins, attorney, was present representing the appellant and stated that they understood and agreed to abide by the conditions for approval. He further stated that since last month, they were able to work out a mutually acceptable agreement with the Hamburg Homeowners Association, which had raised several issues at the October meeting that were resolved. A copy of the signed agreement was submitted for the record. Mr. Hoskins respectfully asked for the Board's approval.

Mr. Glover noted that he would continue to recuse himself from this case, as he did two months ago, since Mr. Hoskins is his law partner.

Mr. Stumbo related that he was pleased that the issues of concern that were raised previously had been worked out between the neighborhood and the applicant; and that he supported the plan and was ready to move forward.

Mr. Hoskins commended his client, Mr. Leo Witt, who was instrumental in getting the interested parties together and working out the agreement to everyone's satisfaction.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (White, Moore absent; Glover recused) to approve **C-2010-88:TRILOGY HEALTH SERVICES, LLC** (a conditional use permit to construct and occupy an assisted living facility [combined residential assisted living facility and nursing home, and all ancillary uses related thereto] in a Planned Neighborhood Residential [R-3] zone, on property located on a portion of 2599 Old Rosebud Road) with the conditions as set forth by the staff.

Ms. Meyer noted that she also was pleased that there was a good outcome.

- e. **C-2010-107: LWC, LLC (dba MISTER MONEY - USA)** - appeals for a conditional use permit to establish a pawn shop in a Highway Service Business (B-3) zone, on property located at 407 W. New Circle Road. (Council District 1)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is conveniently available, and the existing building can accommodate the proposed use without the need for any expansion. The subject property is surrounded on all sides by other commercial uses.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The pawnshop shall be established in accordance with the submitted application and site plan, and shall be limited to the 8,000 (+/-) square-foot suite currently proposed.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. Pawning of vehicles shall not take place at the subject property, and vehicles pawned at other locations shall not be stored on site.
4. This approval shall become null and void should the appellant cease to occupy the subject property as a pawnshop.

Chairman Stout asked whether or not there were objectors present for this subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation - Mr. Matt Will, vice president of Mr. Money USA, was present. He indicated that he had reviewed the conditions for approval and agreed to abide by them.

Since there were no questions from the Board or staff, the Chairman called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (White, Moore absent) to approve **C-2010-107: LCW, LLC (dba MISTER MONEY – USA)** (a conditional use permit to establish a pawn shop in a Highway Service Business [B-3] zone, on property located at 407 W. New Circle Road) for the reasons listed by staff and subject to the four conditions.

- f. **C-2010-109: IMANI FAMILY LIFE CENTER, INC.** - appeals for an amendment to a previously approved conditional use permit for a child care center (to not require an outdoor play area for the after-school program or for a child care facility that accommodates less than 120 children) in a Planned Neighborhood Residential (R-3) zone, on property located at 1555 Georgetown Road. (Council District 2)

The Staff Recommends: Approval of eliminating outdoor play area requirements for the after-school program (and any future summer camp), for the following reasons:

1. Children attending the after school-program and summer camp will be at the facility for relatively short periods of time, and do not have a significant need for outdoor play during those times.
2. Indoor play and recreational facilities at this church are available and adequate to serve the after-school program and summer camp.

This recommendation of approval is made subject to the following conditions:

1. Indoor play and recreational facilities, including the gymnasium, shall be made available for children attending the after-school program and summer camp.
2. A fenced and screened outdoor play area shall be provided for the day care portion of the child care center, with a minimum of 25 square feet of play area to be provided per child. The initial size of the play area and any subsequent expansions shall be governed by the terms and conditions of occupancy permits issued by the Division of Building Inspection.

Chairman Stout asked whether or not there were objectors present for this appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. John Carman was present representing the church, along with Pastor Willis Pope. Mr. Carman indicated that they had reviewed the conditions for approval and agreed to abide by them. The Board was asked for their favorable consideration of this request.

Ms. Meyer asked why they didn't want an outdoor play area. Rev. Pope responded that the outdoor play area is required for child care, which they don't have at this time; and that the after-school program that is currently being offered can be accommodated by the large indoor gymnasium if necessary. He assured Ms. Meyer that an adequate outdoor play area would be built when child care is available at the church.

Ms. Boland stated that, if a motion for approval was made, it should be specified that this does not include approval for eliminating an outside play area for the child care facility; and that it is only with respect to the after-school program.

Action – A motion was made by Mr. Griggs, and seconded by Mr. Stumbo to approve **C-2010-109: IMANI FAMILY LIFE CENTER, INC.** (an amendment to a previously approved conditional use permit for a child care center [to not require an outdoor play area for the after-school program] in a Planned Neighborhood Residential [R-3] zone on property located at 1555 Georgetown Road) based on the staff's recommendation and subject to the two conditions; and with the additional note that this does not exclude an outside play area if they become a daycare.

The votes were as follows:

Ayes: Stumbo, Glover, Griggs, Stout

Nay: Meyer



Absent: White, Moore

The motion for approval carried, 4 to 1.

- g. **A-2010-103: RANDALL PETERSON** - appeals for an administrative review to allow a second kitchen in a single family residence in a Single-Family Residential (R-1B) zone, on property located at 1535/1545 Lakewood Drive. (Council District 5)

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

1. The property is located in a Single-Family Residential (R-1B) zone, which permits just one dwelling unit per property, and one kitchen facility to serve that single unit.
2. Special circumstances, such as a living situation involving a handicapped person or elderly family member, have not been identified by the appellant to justify the need for a second kitchen.
3. Permitting second kitchens as a routine matter, without any special needs or living conditions involved, could lead to a proliferation of multiple living units on properties that are zoned for just one dwelling unit. This would be a direct circumvention of the intent of the Zoning Ordinance, and could ultimately result in adverse impacts to many neighborhoods.

Chairman Stout asked whether or not there was opposition present for this appeal. There was no response; therefore, photos of the subject property were not presented. The Chairman noted the staff's original recommendation of disapproval which, due to more detailed information being provided, has been revised. The staff was asked to explain.

Mr. Marx stated that during the interim, the staff had received more detailed floor plans from the applicant regarding the additional facilities that are proposed within this large residential structure. Based on the details provided and the arrangement of these additional facilities within the dwelling, it was the staff's interpretation that they aren't full kitchens. He explained that, in the past, the appeals the Board has approved for similar situations, to the staff's best recollection, involved a full kitchen facility for a handicapped person or special religious needs. He said since these additional facilities clearly are not full kitchens and appear to be accessory in nature, the staff felt very comfortable recommending approval. Findings for approval were provided by counsel.

Mr. Glover asked the staff for clarification regarding the kitchen issue. Mr. Marx reiterated the staff's interpretation that, after reviewing the details and floor plans, this clearly is not a full kitchen facility designed for the preparation of meals, which is how it is described/defined in the Ordinance. He went on to say that if these types of appeals become more common, it may be necessary to provide a better, clearer definition of kitchen and eliminate the need for an interpretation.

Representation – Mr. Randy Peterson, appellant was present. He clarified that there are several auxiliary areas in the residence, such as the home theater area that will have a microwave and small sink, as well as another area coming in from the pool, etc.

Mr. Griggs asked whether or not the appellant could withdraw his case, since this is not a kitchen. Mr. Marx initially responded no, because there are some interpretation issues. Ms. Boland explained that the applicant had already gotten a refusal from Building Inspection, which is what brought him to the Board.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo, and carried unanimously (White, Moore absent) to approve **A-2010-103: RANDALL PETERSON** (an administrative review to allow second kitchen facilities in a single-family residence in a Single-Family Residential [R-1B] zone on property located at 1535/1545 Lakewood Drive) based on the following findings for approval submitted by counsel.

1. Article 1-11 defines "kitchen facilities" as "Equipment arranged in a room or some other space in a structure which facilitates the preparation of food, including but not limited to, a

combination of two or more of the following – a range, a microwave oven, dishwasher, kitchen sink, or refrigerator.” Although the proposed facilities may include a small refrigerator and a microwave, they are not designed or located in such a way to allow for the preparation of full meals in a kitchen facility intended to serve a separate dwelling unit. Furthermore, the additional sinks proposed are much smaller than a standard “kitchen sink,” thus, reinforcing this conclusion. Rather, the proposed microwave and small refrigerator are intended to be strictly accessory to the single dwelling unit.

2. In Article 1-11, in considering the definitions of “housekeeping unit” and “kitchen facilities,” these terms are intended to work together in defining a dwelling unit so that the presence of multiple kitchen facilities would indicate multiple dwelling units. In this case, the floor plans of the structure are not intended to, nor are they conducive to, the use of the proposed facilities to serve separate dwelling units.
3. The subject structure is clearly intended for use as a single dwelling unit which, due to the size of the structure and diversity of activities planned for the family occupying such structure, will be using the facilities at issue only as accessory to the use of the single housekeeping unit occupying the structure.

(Following disposition of the aforementioned appeal, the Board returned to **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP.**)

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-105: KEN and LINDSAY DONWORTH** - appeal for a variance to reduce the required yard along Montclair Drive from 35 feet to 20 feet in order to construct a 1½-story detached garage in a Single-Family Residential (R-1C) zone, on property located at 1251 Eldemere Road. (Council District 3)

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance would negatively alter the character of the general vicinity, by allowing a sizable accessory building nearly 15' closer to Montclair Drive than the existing residence. Such an arrangement is not typical of this neighborhood, which is characterized by spacious front yards and clearly defined building setbacks.
- b. Special circumstances unique to this particular property have not been identified that might tend to justify a reduction in the required side street side yard setback.
- c. Strict application of the Zoning Ordinance would not unreasonably restrict use of the property or create an unnecessary hardship. The lot is relatively large, with ample space for constructing an accessory building that complies with applicable setback requirements.

Chairman Stout allowed those persons present with issues or concerns to speak first.

Opposition – Ms. Deborah Tatum, president of the Neighbors of Montclair Association, was present. She initially spoke about the ND-1 zoning for this neighborhood that was recently passed by the Planning Commission and currently under consideration by the Council. She related the following concerns: that the requested variance would reduce the platted building line setback along the Montclair side of the appellants' property from 35 feet to 20 feet for the proposed garage construction; and the proposed driveway will be 4 feet wider than what the ND-1 guidelines would allow.

Mr. Griggs asked whether Ms. Tatum was requesting that the variance appeal be postponed until the ND-1 overlay was in place, to which she replied that there was no objection to the appeal being heard today.

Ms. Marie Copeland, a Planning Commission member and neighborhood resident, was present. She spoke about the ND-1 zoning process that the Montclair neighborhood is involved in, and one of the established guidelines that includes maintaining the 35-foot setback along Montclair Drive. She felt that if that rule is broken, it would destroy the credibility of the ND-1 zoning the neighborhood residents have worked to get for the last three years. Ms. Copeland said she hoped the appellants understood that this was not personal, but she strongly supported the ND-1 zoning for the neighborhood, as well as the staff's reasons for disapproval.

Ms. Meyer asked for a brief explanation about the ND-1 zoning. Ms. Copeland oriented the Board to where the Montclair neighborhood is located -- near the University, off Cooper Drive and adjacent to KET-TV. She spoke about the pressures of the student community and the desire to "jump" from Alumni Drive over to Cooper Drive in order to have high density student housing, similar to what has happened on Waller Avenue. It also was noted that this is an infill area. Ms. Copeland spoke further about the ND-1 guidelines the Montclair neighborhood wished to establish with respect to building height, building line and yard setback restrictions, as well as prohibiting the use of vinyl as a building material. She reiterated that although the ND-1 zoning was passed by the Planning Commission, it is now under attack by certain interest groups (i.e., homebuilders, remodelers, etc.) who prefer not to have such restrictions placed on them.

Ms. Tatum noted that the ND-1 committee will be meeting with the Homebuilders Association of Lexington next week to hear any other arguments they may have regarding building materials (prior to the Council's consideration of the proposal).

Representation – Mr. Richard Murphy, attorney, was present on the appellants' behalf. An exhibits packet was distributed to the Board for review. He then introduced Mrs. Donworth and her daughter; Lynn Pedigo with Pedigo Design; Chaz Hite, planner; and two neighbors who would be speaking in support.

Mr. Murphy addressed some of the issues that were raised regarding the ND-1 overlay. He said the proposal for the ND-1 overlay for this neighborhood was heard by the Planning Commission a month or two ago; and that he was present to represent a person who objected to it. He said his client, who lived at the corner of Kastle Road and Cooper Drive, was concerned that if something happened to his house (called the California house or International house), it could not be rebuilt the way it is today in that location. It was noted that a number of other objectors were at the hearing to express their concerns, one of which was with regard to the vinyl issue, because some of them had vinyl on their houses. He went on to say that the ND-1 zoning proposal was passed by the Planning Commission; and due to some of the opposition, including the Homebuilders Association and Remodelers Council who were concerned about doing remodeling in this area and being able to meet their clients' needs, it was scheduled for a public hearing in January.

Mr. Murphy stated that regardless of whether the ND-1 zoning is passed, approved with changes or disapproved in totality, they would need to present this variance request to the Board. He strongly disagreed with the statement that the ND-1 zoning will lose credibility because the Board is hearing this case. Instead, he felt it would add to the credibility because the addition was designed without vinyl and met the height requirement. However, he said, if necessary, the 14-foot-wide driveway that is proposed could be reduced to meet the ND-1 zoning requirement. Mr. Murphy said the ND-1 zoning has not passed, and it is not a law or an ordinance; and that the law in Kentucky says that agencies have to consider the case they have before them on the law that exists on the day of the hearing. He further

stated that the requested variance is justified because setbacks in this neighborhood are not uniform, and there are unique circumstances for each lot. He told the Board that part of the impetus behind the ND-1 zoning was in response to the concern that a house next to KET-TV was suspected of being student housing, which he said is clearly not the case here. He said the appellants have tried to purchase this house for over a year; and that it has been vacant for three years.

Mr. Murphy said they were requesting a variance to reduce the side street side yard of this property, which according to the Ordinance is 30 feet; however, there is a platted building line of 35 feet on Montclair Drive. He said they would like to place a detached garage at the 20-foot setback and were asking for a variance of 15 feet. He explained that the setback is measured from the property line, which is approximately 15 feet from the edge of the street; and that the garage will be approximately 35 feet from the edge of the pavement. He reiterated that Ms. Lynn Pedigo, with Pedigo Design, was hired by the appellants to design the proposed additions to the existing residence and the detached garage because of her vast experience doing remodels in this neighborhood. He said the appellants wanted to be sensitive to the neighborhood's character; they wanted to provide an outdoor, supervised play area for their two children; and they wanted to have a functional garage. It was noted that the existing garage is too narrow to accommodate a standard size car or provide any storage space.

Mr. Murphy spoke about the issues with this property. Reference was made to Exhibit B in the handout that showed a 1930 plat of Lot 6 (the subject property) at the corner of Eldemere and Vanmeter (now known as Montclair), to illustrate its size in comparison to the smaller lots on Summit. Referring to Exhibit A, Mr. Murphy said Lots 5 and 6 were subdivided into three lots in 1990, which essentially took away half of the usable area outside the setback line, created three driveways coming out in a row, and changed the configuration of the subject property. He said, over the years, there have been a number of other plats that have modified building setback lines in this neighborhood, which were shown on a 1983 plat in Exhibit C of the corner property located at Kastle Road and Cooper Drive; a 1979 plat in Exhibit D of the corner property located at Kastle and Montclair; a 2003 plat in Exhibit E of the corner property at Scoville Road and Cooper Drive; and a 1979 plat in Exhibit F of the corner property at Eldemere and Montclair, across the street from the subject property. Reference was made to Exhibit G, a 1940 plat showing the Montclair subdivision, to illustrate that corner lots traditionally have been treated differently (e.g., side street side yards of 15 feet) and variances in the setbacks and building lines have been allowed. He said the point was made at the ND-1 hearing about the inconsistencies of this neighborhood, in that there is a variety of house styles (e.g., Ranch, Cape Cod, etc.), different setbacks, different heights (1, 1½ and 2 stories), attached and detached garages or none at all. A series of photos was shown to illustrate various views and features of the subject and surrounding properties.

Referring to the site plan shown on the overhead, Mr. Murphy said if the new garage is placed at the platted 35-foot setback, it would significantly reduce the usability of the appellants' back yard; however, the garage is designed to be aesthetically pleasing and at a different plane than the main house to provide architectural interest, in addition to which the garage doors will not be facing Montclair due to the 90-degree angle of the access drive. He noted four letters of strong support in the handout (Exhibits H, I, J & K) and read excerpts from two of them. Two speakers present in support were introduced.

Mr. Brutus Clay, who lives at 1245 Eldemere Road (two houses down from the subject property), related his strong support of the requested variance, as well as the appellants' plans for the renovation/addition, which he felt were in keeping with the character of the neighborhood and would improve the value of the surrounding homes. He urged the Board to approve the variance request.

Mr. Ben Campbell, a residential appraiser, 1226 Eldemere Road, was present and told the Board that he has appraised many properties in this neighborhood over the years, including the subject property. He spoke about the awkward placement of the existing fence and driveway and the condition of the overgrown landscaping that created a barrier, noting that the appellants' plan was positive and would not only address that issue but would enhance the property's overall appearance and functionality. It was Mr. Campbell's feeling that the requested variance should be approved as well.

Ms. Lynn Pedigo, 559 North Broadway, was present and spoke about the plan she designed for the appellants, and the thought that was put into trying to make it a usable floor plan for today's living and for a family of four with potential for growth. Also taken into account was the use of a garage in today's lifestyle, which is completely different than it was the 30s or when this property was developed. She

said the proposed garage would be moved closer to the street to create more usable space in the back yard; the fence will be set back closer to the garage and away from the street; and the rear yard will be secured for the children. She also noted that the ND-1 overlay potential was taken into consideration during the design process so that the proposed additions clearly met everything that was required, with the exception of the side street side yard variance. Ms. Pedigo said there didn't seem to be many objectors to the variance appeal; and that notice letters were mailed to the neighbors within the required 200-foot radius of the property in question. She respectfully asked for the Board's approval.

In closing, Mr. Murphy told the Board that although the Donworths currently do not occupy the house on the subject property, they have been in contact with their neighbors regarding the variance and the proposed construction, which an applicant is encouraged to do prior to the Board's hearing of an appeal; and they had engaged Ms. Pedigo, an experienced residential designer, who has done a number of other projects in this neighborhood. Mr. Murphy went on to say that the design they have, which included the 90-degree angle of the driveway and garage doors not facing the street, would enhance the property, be in keeping with, and would improve the neighborhood. He asked for the Board's favorable consideration.

Mr. Griggs said he agreed with Mr. Murphy's position that this case should be heard without regard to the ND-1 action pending before the Council, and he did not think it would be precedent setting. Further, the ND-1 overlay would be just as strong because this case couldn't be used as an example since those guidelines aren't in effect. He said, given that there was really no opposition from the neighborhood, he would consider revising the submitted findings/conclusions in the event of a motion for approval. He also noted a possible added condition that the driveway be reduced in width by 4 feet (from 14' to 10') which, after conferring with the applicant, Mr. Murphy indicated would be acceptable.

In response to the Chairman's request for staff comment, Mr. Marx related his concern that a precedent would affect the ND-1 standard, as indicated by an earlier speaker. He also said the justification that was provided for this application was very weak with regard to special circumstances; and despite the previous lot subdivisions, the lot in question is very large -- 94' wide and 185' deep. Mr. Marx stated that it would be very hard for the Board to disapprove a similar request regarding the (same) setback requirement. He offered to show aerial photos of the two adjacent corner lots to illustrate what the Board may be facing in the future.

Chairman Stout related his observation, as a tenured Board member, that the Board does not treat all variance cases for their consideration the same, but each one on its own merits, on a case-by-case basis. He said it was his understanding that the ND-1 for this neighborhood was relative to redevelopment, the new construction or rebuilding of homes, home additions and related building materials; and that he couldn't find any reason why the variance would not have been recommended for approval, despite being cautioned by staff that a precedent may be set. He stated that the appellants were trying to upgrade this house and were proposing to put in a functional garage with driveway access and, as agreed, would relinquish the 4 feet, which he fully supported. Mr. Stout also said he didn't see how this was tampering with anything the neighborhood was trying to do with regard to the ND-1 overlay.

For clarification, Ms. Tatum said, in response to Mr. Murphy's earlier statement about there being a number of objectors, that five people were present in opposition to the ND-1 zoning and 8 were present in support. She stated that 80 percent of the neighborhood respondents agreed to the ND-1 zoning that is going forward; and if the Homebuilders Association of Lexington and the remodelers had come to them a little earlier, this would have been "a done deal". Ms. Tatum said she recognized that this has no bearing on the variance appeal before the Board for consideration today.

Referring to the proposed, modified findings provided, Mr. Glover asked about the reason for reducing the driveway from 14 feet to 10 feet in width. Mr. Griggs responded that he suggested the reduction because it would be required by the ND-1 standards; and that Mr. Murphy, on the applicants' behalf, indicated having no objection to reducing the width of the driveway. He said this would just make it more conforming with the way the neighborhood is hoping to direct itself.

Ms. Copeland asked to include a condition recognizing that this design is in accordance with the proposed ND-1 guidelines, with the exception of the variance. She felt this would give the ND-1 credibility.

For clarification, Ms. Boland asked whether Ms. Copeland was proposing a factual finding or a condition. Ms. Boland cautioned the Board about imposing a condition based on an ordinance that is pending and which may or may not be approved by the Council. She said evidence was presented that they designed this in accordance with the ND-1 proposal; and as a finding of fact, that would be fine. Ms. Copeland indicated that a finding to that effect would be acceptable.

Chairman Stout inquired whether the applicant was agreeable with the added finding, and Mr. Murphy indicated that she was.

Action – A motion was made by Mr. Glover, seconded by Mr. Stumbo and carried unanimously (White, Moore absent) to approve **V-2010-105: KEN and LINDSAY DONWORTH** (a variance to reduce the required yard along Montclair Drive from 35 feet to 20 feet in order to construct a 1½-story detached garage in a Single-Family Residential [R-1C] zone on property located at 1251 Eldemere Road) with acknowledgement that the facts show that the variance is designed in accordance with the proposed ND-1 guidelines under consideration, and based on the following findings:

#### **FINDINGS FOR APPROVAL**

1. Granting this variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity and will not cause a hazard or nuisance to the public. The Montclair neighborhood is characterized by a diverse style of houses, heights, attached and detached garages, and garages at the front and rear of properties. It also has a diversity of building setback lines. It is desirable to have the detached garage at a different plane than the main house.
2. Granting this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because a detached garage is a reasonable use in this neighborhood. The current garage has its doors facing Montclair, and the proposed garage will not have its doors facing Montclair, which will improve the appearance from Montclair Drive. Also, because the property line is approximately 15 feet from the edge of the street, the garage will be approximately 35 feet from the edge of pavement.
3. The special circumstances which apply to this property and which do not generally apply to the land in the general vicinity or in the same zone are that this property has been reduced in size on the north and on the west. A driveway runs between this property and the property to the west.
4. Strict application of the regulations of the Zoning Ordinance would deprive the applicants of a reasonable use of their land or create an unnecessary hardship because locating either an attached or detached garage at the same building plane would result in elimination of much of the useful backyard area.
5. The circumstances surrounding the requested variance are not the result of the actions of this applicant taken subsequent to the regulation from which relief is sought. The reductions in size of the property, the large plane on the side facing Montclair Drive, the independent driveway at the rear of the property and other matters all existed prior to the purchase of the property by these applicants.

#### **CONDITION**

1. The garage shall be constructed in accordance with the submitted application and site plan, except that the driveway width will be reduced from 14 feet to 10 feet.

#### **D. Conditional Use Appeals**

None Remaining

#### **E. Administrative Review**

None Remaining

#### **IV. BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this

time. Chairman Stout turned the meeting over to Mr. Griggs, for an announcement regarding the election of officers.

- A. Election of Officers – At this time, Mr. Griggs (Secretary) noted the Board's yearly election of a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations were made from the floor. Mr. Griggs nominated Mr. Stout as Chairman.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo, and carried unanimously (Moore, White absent) to re-elect Mr. Stout as Chairman.

Mr. Griggs nominated Ms. Moore as Vice-Chair.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover, and carried unanimously (Moore, White absent) to re-elect Ms. Moore as Vice-Chair.

Mr. Stumbo nominated Mr. Griggs as Secretary.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Moore, White absent) to re-elect Mr. Griggs as Secretary. Following the Board's actions, the meeting was turned back over to Chairman Stout.

- B. Possible By-Law Revision – Mr. Marx stated that the issue of possibly establishing guidelines/requirements related to streamlining cases (e.g., speaker time limits) would be tabled until next month due to Ms. Moore's absence, since she brought this issue to the Board's attention.

Action – A motion to that effect was made by Ms. Meyer, seconded by Mr. Stumbo, and carried unanimously (Moore, White absent) to postpone this matter until next month's meeting.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.

- A. House Bill 55 Training Opportunity – Mr. Marx reminded the Board about an APA audio conference on Wednesday, January 19, 2011, starting at 4:00 p.m., in the Division of Planning conference room, 7<sup>th</sup> floor of the LFUCG Phoenix Building. The title of this conference is "Retrofitting Corridors" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment/Planning Commission members and Staff.

- B. The Staff wished the Board members and their families a happy and safe Christmas and New Year holiday.

- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date will be January 28, 2011.

- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 2:38 p.m.

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Louis Stout, Chairman

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James Griggs, Secretary